

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sebastian Torero	Team: Squad #1	CCRB Case #: 201900062	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 12/13/2018 10:00 PM, Friday, 12/14/2018 12:21 AM, Saturday, 12/15/2018 2:00 AM	Location of Incident: In front of 670 Rockaway Avenue; PSA 2 Stationhouse	Precinct: 73	18 Mo. SOL 6/13/2020	EO SOL 1/28/2021	
Date/Time CV Reported Wed, 12/26/2018 10:32 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/03/2019 11:03 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Volodymyr Burdeynny	14915	954580	PSA 2
2. POM Godwin Ngai	01239	954175	PSA 2
3. POF Lisa Petrocelli	20020	959068	PSA 2
4. An officer			
5. POF Tiffani Austin	21532	962232	PSA 2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Rosemarie Messiana	20048	965337	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.POM Godwin Ngai	Abuse: On December 13, 2018, in front of 670 Rockaway Avenue in Brooklyn, Police Officer Godwin Ngai frisked § 87(2)(b)	
B.POM Godwin Ngai	Abuse: On December 13, 2018, in front of 670 Rockaway Avenue in Brooklyn, Police Officer Godwin Ngai strip-searched § 87(2)(b)	
C.POM Volodymyr Burdeynny	Abuse: On December 13, 2018, in front of 670 Rockaway Avenue in Brooklyn, Police Officer Volodymyr Burdeynny frisked § 87(2)(b)	
D.POM Volodymyr Burdeynny	Abuse: On December 13, 2018, in front of 670 Rockaway Avenue in Brooklyn, Police Officer Volodymyr Burdeynny searched the vehicle in which § 87(2)(b) was an occupant.	
E.POF Lisa Petrocelli	Abuse: On December 13, 2018, in front of 670 Rockaway Avenue in Brooklyn, Police Officer Lisa Petrocelli searched the vehicle in which § 87(2)(b) was an occupant.	
F.POM Godwin Ngai	Abuse: On December 13, 2018, in front of 670 Rockaway Avenue in Brooklyn, Police Officer Godwin Ngai seized § 87(2)(b)'s property.	
G. An officer	Abuse: On December 14, 2018, at the PSA 2 stationhouse, an officer threatened § 87(2)(b) with the use of force.	

Officer(s)	Allegation	Investigator Recommendation
H.POF Tiffani Austin	Abuse: On December 15, 2018, at the PSA 2 stationhouse, Police Officer Tiffani Austin did not process § 87(2)(b) s complaint regarding an officer.	
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) filed this complaint with IAB on December 26, 2018. IAB referred the case to the CCRB on January 3, 2019.

On December 13, 2018, PO Godwin Ngai, PO Volodymyr Burdeynny, and PO Lisa Petrocelli of PSA 2 stopped § 87(2)(b)'s rental vehicle in front of 670 Rockaway Avenue in Brooklyn for a red-light violation. § 87(2)(b)'s friend, § 87(2)(b) was riding in the front passenger's seat. PO Ngai instructed § 87(2)(b) to exit the vehicle and frisked § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g)). During the frisk, § 87(2)(b)'s pants dropped below his knees, exposing his long john underwear. PO Ngai then patted down the exterior of § 87(2)(b)'s underwear over his buttocks and groin (**Allegation B: Abuse of Authority**, § 87(2)(g)). PO Burdeynny instructed § 87(2)(b) to exit the vehicle and then frisked him, and PO Burdeynny and PO Petrocelli searched § 87(2)(b)'s vehicle (**Allegations C, D, and E: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) had an active I-card and open Criminal Complaint and was transported to the PSA 2 stationhouse.

At the PSA 2 stationhouse, PO Burdeynny informed § 87(2)(b) that the officers seized his rental vehicle (**Allegation F: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) refused to stand up to leave the holding cell as instructed and an officer told § 87(2)(b) "Get up before I tase you" (**Allegation G: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was released with summonses for § 87(2)(b).

On December 15, 2019, § 87(2)(b) returned to PSA 2 and asked PO Tiffani Austin to file a complaint. She refused but provided him with the CCRB's phone number (**Allegation H: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

Video footage regarding this incident was obtained from the exterior cameras of the Marcus Garvey Apartments in Brooklyn, as well as body-worn camera footage from PO Burdeynny, PO Ngai, and PO Petrocelli (Board Reviews 01-04).

Findings and Recommendations

Allegation (A) Abuse of Authority: On December 13, 2018, in front of 670 Rockaway Avenue in Brooklyn, Police Officer Godwin Ngai frisked § 87(2)(b).

Allegation (C) Abuse of Authority: On December 13, 2018, in front of 670 Rockaway Avenue in Brooklyn, Police Officer Volodymyr Burdeynny frisked § 87(2)(b).

Allegation (D) Abuse of Authority: On December 13, 2018, in front of 670 Rockaway Avenue in Brooklyn, Police Officer Volodymyr Burdeynny searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (E) Abuse of Authority: On December 13, 2018, in front of 670 Rockaway Avenue in Brooklyn, Police Officer Lisa Petrocelli searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that officers frisked § 87(2)(b) and § 87(2)(b) and searched § 87(2)(b)'s vehicle. § 87(2)(g)

§ 87(2)(b)'s pants fell from his waist or if PO Ngai patted down the outside of § 87(2)(b)'s underwear over his buttocks or groin (Board Review 01).

PO Ngai did not recall who frisked § 87(2)(b) or when they did so, and after watching the security footage testified that he did not know which officer it captured frisking § 87(2)(b) (Board Review 06). PO Burdeynny testified that after the vehicle was stopped PO Ngai approached and made contact with § 87(2)(b) (Board Review 07). Neither PO Burdeynny, PO Ngai, nor PO Petrocelli recalled § 87(2)(b)'s pants falling down, and denied that any officer intentionally pulled them down (Board Review 06-08).

NYPD Patrol Guide Procedure 208-05 states that any search in which an individual's undergarments are exposed or clothing removed, lifted, or pulled down to expose undergarments is a strip-search. Strip-searches can only be done with the knowledge and approval of the arresting officer's immediate supervisor or the borough Court Section supervisor, and must be conducted in a private, secure area (Board Review 13).

§ 87(2)(g)

Allegation (F) Abuse of Authority: On December 13, 2018, in front of 670 Rockaway Avenue in Brooklyn, Police Officer Godwin Ngai seized § 87(2)(b)'s property.

It is undisputed that § 87(2)(b) double-parked his vehicle when officers pulled him over. It is undisputed that § 87(2)(b) was driving a rental vehicle and that police seized this vehicle and returned it to the rental company.

PO Burdeynny's body-worn camera footage captures PO Ngai make the decision to transport § 87(2)(b)'s vehicle back to the PSA 2 stationhouse. At 11:10 in the video player's timestamp, PO Ngai asks § 87(2)(b) if he rented the vehicle and § 87(2)(b) responds that he did. PO Ngai then asks if § 87(2)(b) is the only driver on the vehicle, and § 87(2)(b) responds, "Yes." PO Ngai then tells PO Burdeynny that officers will have to bring the vehicle back with them (Board Review 03).

PO Burdeynny testified that the vehicle was transported to the PSA 2 stationhouse, invoiced, and released to the rental company that owned the vehicle (Board Review 06). The property voucher for the vehicle shows that PO Burdeynny invoiced the vehicle for safekeeping and notified its owner by telephone at approximately 12:07 PM on December 14, 2018 (Board Review 14). On a fly page in his memo book, PO Burdeynny noted that "Drivo LLC" was notified of the invoiced vehicle (Board Review 11). A supervisor from this company confirmed in a telephone call that the vehicle was in the company's fleet until August of 2019 (Board Review 15).

NYPD Patrol Guide Procedure 208-03, section 4 states that, following an arrest, officers may safeguard a person's vehicle if appropriate (Board Review 16). Patrol Guide Procedure 218-12 states that vehicles may be safeguarded at a command for 48 hours when not needed as arrest evidence or as a subject in forfeiture proceedings, and then returned to the owner, the owner's representative, or removed a Property Clerk storage facility (Board Review 17).

§ 87(2)(g)

Allegation (G) Abuse of Authority: On December 14, 2018, inside of the PSA 2 stationhouse, an officer threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged that after being placed in the holding cells at the PSA 2 stationhouse, two officers who were not present at his arrest entered the holding cell area and told him they wanted him to come downstairs to talk. A white, male officer who was 5'6" tall and of a medium build, wearing a gray sweatshirt, jeans, and sneakers, told § 87(2)(b) that he was going to be transported to the 75th Precinct stationhouse. § 87(2)(b) sat on the floor of his cell in protest, and the officer verbally threatened to use his Taser on § 87(2)(b) if he did not get up (Board Review 05).

§ 87(2)(b) testified that he was first taken to the 73rd Precinct stationhouse, then to the PSA 2 stationhouse, and then to § 87(2)(b). The PSA 2 command log and Prisoner Holding Pen Roster show that § 87(2)(b) arrived at the PSA 2 stationhouse on December 13, 2018 at 11:21 PM. On December 14, 2018 at 12:21 AM, PO Burdeynny and PO Ngai transported him to the 73rd Precinct stationhouse (Board Review 18-19). § 87(2)(b) then returned to the PSA 2 stationhouse at 12:55 AM on December 14, 2018 and was brought to § 87(2)(b) at § 87(2)(b) according to the Prisoner Holding Pen Roster (Board Review 19).

§ 87(2)(g)

PO Ngai did not recall § 87(2)(b) refusing to leave his cell, or hearing any officer threaten to use a Taser against him. PO Ngai was not made aware of such an incident taking place (Board Review 06).

PO Burdeynny denied threatening to use his Taser on § 87(2)(b) and testified that he did not hear any other officer make such a threat and that there were no plans to take § 87(2)(b) to the 75th Precinct (Board Review 06).

The investigation attempted to identify officers who fit the description § 87(2)(b) gave who were assigned to PSA 2 and the 73rd Precinct during the time § 87(2)(b) was moved. PO Michael Wallace, a 5'6" and 200-pound white male, was working as a field intelligence officer at PSA 2 during Tour 3 on December 13, 2018. PO Matthew Ingenito, a 5'11" and 205-pound white male was assigned to anti-crime for PSA 2 on the same tour (Board Review 20). At the 73rd Precinct, PO Brett Woodard, a Hispanic male, was assigned to anti-crime during Tour 3 on December 13, 2018; he was the only officer in that command with a plainclothes assignment at that time (Board Review 21). The roll call for the PSA 2 command for Tour 1 on December 14, 2018 does not list any officers as being given a plainclothes assignment (Board Review 22).

PO Wallace testified that he was working in plainclothes at the PSA 2 stationhouse on the evening of December 13, 2018 as a field intelligence officer (Board Review 23). PO Wallace did not recall being involved in the transfer of a prisoner and did not recognize § 87(2)(b) from an arrest photo. PO Wallace testified that he was working in the basement of the stationhouse and the holding cells are located on the first floor, far away from where he was debriefing prisoners. PO Wallace's memo book entries from that day state that his tour ended at 11:35 PM, prior to § 87(2)(b)'s removal at 12:21 AM on December 14, 2018 (Board Review 24).

PO Woodard's memo book entries from December 13, 2018 do not mention the PSA 2 stationhouse or transporting a prisoner, and state that his tour ended at 9:00 PM (Board Review 25).

PO Ingenito testified that he was assigned to an anti-crime team with two other officers for PSA 2 and that he was probably on duty from 5:30 PM on December 13, 2018 to 2:05 AM on December 14, 2018. PO Ingenito denied trying to remove a prisoner from the PSA 2 stationhouse who refused to leave, did not recall the incident as alleged, and stated that he did not think he was present for the incident (Board Review 26).

§ 87(2)(g)

Allegation (H) Abuse of Authority: On December 15, 2018, at the PSA 2 stationhouse, Police Officer Tiffani Austin did not process § 87(2)(b)'s complaint regarding an officer.

§ 87(2)(b) testified that on December 15, 2018, he returned to the PSA 2 stationhouse alone to retrieve his property. § 87(2)(b) approached the desk at the stationhouse and asked a black, uniformed female police officer who was 5'5" tall with a heavy build, identified by the investigation as PO Tiffani Austin, for his property. She retrieved his property, and he asked her for his arresting officer's name. PO Austin wrote PO Burdeynny's name on the voucher. § 87(2)(b) told her that he wanted to make a complaint. PO Austin told him that nobody was there, that she would not do that for him, and that if he wanted to speak to someone else, he would have to return in the morning. § 87(2)(b) then asked for a number to call and PO Austin wrote down "1800 341-2272 CCRB" on the voucher (Board Review 05). § 87(2)(b) provided the property voucher which had "PO Burdeny" and "1800 341-2272 CCRB" written on it (Board Review 27).

PO Tiffani Austin, a black female who is approximately 5'6" and 215 pounds, was assigned as the telephone switchboard operator at PSA 2 on December 15, 2018. PO Austin testified that she would have returned a civilian's property in that role and interacted with any civilians who wanted to make complaints but did not recall speaking with any civilians that morning. PO Austin did not recognize § 87(2)(b) from his arrest photograph (Board Review 28).

PO Rosemarie Messiana, a Hispanic female who is approximately 5'2" and 142 pounds, testified that on December 15, 2018, PO Austin was training her in the duties of a telephone switchboard operator (Board Review 29). According to PO Messiana's memo book, § 87(2)(b) received his property at 1:30 AM that day (Board Review 30). PO Messiana testified that § 87(2)(b) was in the waiting area of the PSA 2 stationhouse and she and PO Austin approached the window that opened to the waiting area to speak to him. PO Messiana went with PO Austin to retrieve § 87(2)(b)'s property while § 87(2)(b) remained in the waiting area. PO Messiana then returned § 87(2)(b)'s property and § 87(2)(b) left. PO Messiana did not recall § 87(2)(b) asking about any other officers or about making a complaint. PO Messiana denied that § 87(2)(b) asked to file a complaint only to have an officer tell him that it could not be done at that moment and he would have to return later that morning. PO Messiana did not recall § 87(2)(b) speaking to PO Austin. PO Messiana did not recall if there were any officers in the waiting area with § 87(2)(b) and testified that § 87(2)(b) would not have been able to speak to anyone else at the stationhouse desk from where he was (Board Review 29). There is no command log entry from that day regarding § 87(2)(b) retrieving his property at the stationhouse (Board Review 31).

NYPD Patrol Guide Procedure 207-31 states that upon receiving an in-person complaint from a civilian alleging misconduct by a uniformed member of service, officers must interview the complainant, have the complainant prepare a Civilian Complaint Report, and report the complaint to the CCRB via telephone (Board Review 32).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) and § 87(2)(b) have been a party.
- PO Ngai has been a member-of-service for seven years and has been a subject in eight CCRB complaints and 21 allegations, none of which were substantiated.
- PO Burdeynny has been a member-of-service for six years and has been a subject in five CCRB complaints and 12 allegations, of which one was substantiated.
 - 201801245 involved substantiated allegations of a vehicle search against PO Burdeynny. The Board recommended Command Discipline A and the NYPD imposed Formalized Training.
- PO Petrocelli has been a member-of-service for four years and has been a subject in three CCRB complaints and five allegations, none of which were substantiated.
- PO Austin has been a member-of-service for three years and this is the first CCRB complaint to which she has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
- On December 24, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 35).

Squad No.: 1

Investigator: _____ Investigator Sebastian Torero _____

Squad Leader:	Signature	Print Title & Name	Date
	Signature	Print Title & Name	Date